

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2352 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

LIYAKATHUSSAIN REHMANBHAI BELIM BROTHER OF DETENU

Versus

DISTRICT MAGISTRATE

Appearance:

MR NM KAPADIA for Petitioner

MR. H.H. PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/12/1999

ORAL JUDGEMENT

The District Magistrate, Mehsana, passed an order on 20.3.1999 in exercise of power under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985, (hereinafter referred to as 'the PASA Act') detaining Iqbalbhai Rehemabhai Belim. The grounds of detention indicate that the detaining authority took into consideration six prohibition cases registered against the detenu. The detaining authority also took into consideration the statements of three witnesses whose

identity has not been disclosed in exercise of power under Section 9(2) of the PASA Act. The authority considered that the proceedings under Section 93 of the Bombay Prohibition Act were initiated against the detenu but that has brought no improvement in the behaviour of the detenu and he has continued his nefarious activities. The authority considered that resorting to less drastic remedy may not be as efficacious as detention under the PASA Act, as the detenu is required to be immediately prevented from pursuing his illegal and anti social activities.

2. The detention is challenged on various grounds.

The main ground is non-supply of documents relating to the proceedings under Section 93 of the Bombay Act which are considered by the detaining authority while passing the order.

3. Mr. Kapadia, learned advocate for the petitioner has restricted his arguments to the above ground alone. He submitted that the detaining authority has taken into consideration proceedings under Section 93 of the Bombay Prohibition Act in para 2 of the grounds of detention. The papers relating to the proceedings under Section 93 of the Bombay Prohibition Act were not supplied to the detenu at the time of detention. A representation was made on behalf of the detenu on 29.3.1999. The detaining authority has not complied with this request for copies. A reply was given to the representation on 20.4.1999 wherein also demand for copies of papers relating to the proceedings under Section 93 of the Bombay Prohibition Act was not even considered. Mr. Kapadia therefore submitted that this is an infringement of the right of the detenu of making an effective representation and the continued detention therefore would be rendered illegal.

4. Mr. H.H. Patel, learned AGP appearing for the respondent authorities upon instructions and after verifying file, states that the documents in respect of the proceedings under Section 93 of the Bombay Prohibition Act, have not been supplied to the detenu. He however submitted that documents which are relied on by the detaining authority are only required to be supplied.

5. Considering the rival side contentions, what is required to be decided by this Court is, whether the detaining authority took into consideration the proceedings under Section 93 of the Bombay Prohibition Act. In para 2 of the grounds of detention the authority has categorically stated that to check the activities of the detenu steps under Section 93 of the Bombay

Prohibition Act have been taken but that had no effect on the anti-social activities of the detenu and that the detenu continues his nefarious activities undisturbed and unperturbed.

6. Considering the language employed in the grounds of detention and overall tenor of the grounds of detention, it is amply clear that proceedings under Section 93 of the Bombay Police Act were taken into consideration by the detaining authority while passing the order of detention. Admittedly the documents relating to the proceedings under Section 93 of the Bombay Police Act have not been supplied to the detenu though demanded. This has adversely affected the rights of the detenu of making an effective representation guaranteed under Article 22(5) of the Constitution of India. The continued detention of the detenu therefore would be rendered illegal.

7. The petition therefore deserves to be allowed.

8. The petition is therefore allowed. The order of detention dated 20.3.1999 passed by the District Magistrate, Mehsana, is quashed and set aside. The detenu be set at liberty forthwith if not required in any other case. Rule is made absolute. No order as to costs.

(A.L. DAVE, J)

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